IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5141 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS
THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTILAL LALCHAND SHAH & 22 - Petitioner(s)
Versus
MUNICIPAL COMMISSIONER SURAT & 3 - Respondent(s)

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Appearance :

MR ANAND L SHARMA for Petitioner No(s).: 1,2,3,4,5,
6,7,8,9,10,11,12,13,14,
15,16,17,18,19,20,21,22.
MR PRASHANT G DESAI for Respondent No(s).: 1 & 2.
MR HL JANI, AGP for Respondent No(s).: 3.

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CORAM :THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS
THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date : 22/06/2005

ORAL JUDGMENT

(Per : THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. Rule. Mr. Prashant G Desai, learned advocate waives service of rule for respondent nos. 1 and 2 and Mr. HL Jani, Ld. AGP waives service of rule for respondent no. 3.

Heard the learned advocates for the parties.

2. These 22 petitioners have approached this Court for claiming the relief that writ of mandamus be issued against the respondents and in particular against respondents nos. 1 and 2 directing them to allot alternative accommodation to the petitioners whose premises which are situated on Bhestan Road, Surat and which are likely to be demolished in view of the fact that their premises are falling within the road line prescribed under the Town Planning Scheme.

Having perused the averments made in the petition and having considered the submissions made by the learned advocates, it appears to us that the following directions can meet the ends of justice and the petition can be finally disposed of. These directions have been issued in view of the statement made by Mr. PG Desai that their applications for grant of alternative accommodation will be considered positively, which is acceptable to the otherside i.e. the petitioners. Mr. Desai has further stated that so far some of the petitioners are concerned, a small portion of their premises is affected by the road line, which is now demolished and these petitioners are now using their respective premises as originally they were doing and, therefore, there is no need to provide them with alternative accommodation. This fact is not disputed by Mr. Sharma, learned advocate for the petitioners. In view of the same, these petitioners will have no claim or right to have alternative accommodation from respondent no. 1. Hence, following directions :-

I. So far petitioners nos. 4, 6 to 12, 17, 20 and 21 are concerned, they are not affected much and they are already using their premises as before. Therefore, they will not be entitled to lodge any claim for alternative accommodation.

II. So far as petitioner no. 16 – Akber Amad Shaikh is concerned, it is stated by Mr. Desai that the Officers of respondent no. 1 are not able to identify his premises. Hence, petitioner no. 16 shall identify his premises and shall furnish adequate evidence or proof and also the details that may be required by Officers of respondent no. 1 to make him eligible for lodging the claim for alternative accommodation. These details shall be furnished by petitioner no. 16 to respondent no. 1 as early as possible and not later than 15 days from the date of this order.

III. So far petitioner no. 18 – Rajvant Kaur is concerned, it is stated by Mr. Desai that she has not furnished any details with regard to her possession and/or occupation of the premises in question. She may, therefore, give adequate proof and also the details as required by the Officers of respondent no. 1 to them so as to make her eligible to lodge claim for alternative accommodation. She will have to furnish these details as early as possible and not later than 15 days from the date of this order.

IV. Petitioner no. 2 – Madanlal Balchand Shah, as per the statement of Mr. Desai, has already been allotted a shop in Udhna area where he was having his original shop. In that view of the matter, he is not entitled to receive any alternative accommodation.

V. Petitioners nos. 1 – Shantilal Lalchand Shah, 3 – Mahavirkumar Balchand Shah, 5 – Govindsinh Rajput, 14 – Sampatlal D Shah, 15 – Noormohmmed Natha, 19 – Javermal Ganeshji Purohit and 22 – Abdul Sattar Noor Mohammed, as per the statement of Mr. Desai, have already been allotted the alternative accommodation as per their selection and hence they will not be entitled to now claim any alternative accommodation from respondent no. 1.

VI. The persons who have already been allotted alternative sites, if they are

vacant plots of land and if such petitioners apply for grant of reasonable time to respondent no. 1 for putting up construction, the Corporation shall consider their applications sympathetically.

VII. In the event petitioner no. 16 – Akber Amad Shaikh and petitioner no. 18 – Rajvant Kaur are able to convince Officers of respondent no. 1 with regard to the ownership and possession of their properties, respondent no. 1 shall invite applications from them for grant of alternative accommodation and those petitioners shall make such applications within 15 days from the date of producing the aforesaid evidence or proof before the Officers of respondent no. 1.

VIII. As and when such applications are made by petitioners nos. 16 and 18, respondent no. 1 will process them expeditiously and allot them suitable alternative accommodation and if need be and upon applications being made for grant of reasonable time for putting up construction if the vacant plots of land are allotted to these petitioners, the applications will be considered by respondent no. 1 sympathetically.

IX. If any-one is occupying residential premises, his/her possession shall not be disturbed till 15th October, 2005 as per the assurance given by Mr. Desai.

In view of the above, the petition is allowed accordingly. Rule made absolute.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

* Pansala.